

Department of the Interior Departmental Manual

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Series: Multi-Program Management

Part 503: Interagency Review Procedures

Chapter 1: Corps of Engineers Navigation Permits

Originating Office: U.S. Fish and Wildlife Service

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1.1 Purpose. This chapter prescribes the Department's procedures for implementing the agreement of July 13, 1967, between the Secretary of the Army and the Secretary of the Interior with respect to the review of applications for permits for dredging, filling, excavation, discharge of dredged or fill material, and other activities including construction of facilities and works in the navigable and ocean waters of the United States issued by the Corps of Engineers (Appendix 1).

1.2 Policy. The Department of the Interior considers it a priority responsibility to review and provide competent and timely comments on permit applications submitted to the Corps of Engineers for activities in navigable waters which affect the interests of the Department or which impair natural resources, cultural values, or the related environment. Of particular concern to the Department is the piecemeal destruction or adverse modification of fish and wildlife habitat and related ecosystems. Departmental comments should be directed toward developing a coordinated and unified position on the substantive issues. Where objections are to be made or reservations recommended to be stipulated in the permit, they shall be based upon full consideration of the substantive factors involved in the light of the public and private interests affected. Bureaus and offices shall observe, in both intradepartmental and extradepartmental actions, a spirit of full cooperation and coordination in the identification and resolution of differing views.

1.3 Responsibility.

A. Assistant Secretary - Fish and Wildlife and Parks. The Assistant Secretary for Fish and Wildlife and Parks (AS/FWP) has the responsibility for liaison with the Secretary of the Army on matters related to the Department's permit review responsibilities, and the lead role in resolving interagency differences in views on substantive issues excluding only disputed matters not under his program jurisdiction or which have been referred to the Under Secretary by the Corps under the Memorandum of Understanding.

B. Assistant Secretary - Program Development and Budget. The Assistant Secretary for Program Development and Budget (AS/PDB) has the responsibility for coordinating the resolution of differing views on individual permit application reviews which involve the

jurisdiction of two or more Assistant Secretaries.

C. All Assistant Secretaries. Assistant Secretaries are responsible for (1) resolving any differing views among bureaus and offices under their jurisdiction, (2) cooperating fully in coordination with the AS/PDB in resolving differences among bureaus and offices across Departmental jurisdictional lines, and (3) providing promptly to the Under Secretary, through the AS/PDB, all necessary background analyses, position statements, and pertinent documents and maps relative to issues within their program jurisdiction raised by the Corps for the consideration of the Under Secretary under the Memorandum of Understanding.

D. Bureau of Sport Fisheries and Wildlife. The Director, Bureau of Sport Fisheries and Wildlife (BSFW) has the responsibility for Departmental review of permit applications for activities and works in navigable and ocean waters issued by the Secretary of the Army, acting through the Chief of Engineers, Corps of Engineers (Corps). The Director, acting in the field through his Regional Directors, is responsible for establishing and maintaining liaison with the Chief of Engineers and with the Division Engineers and District Engineers of the Corps on matters relating to permit applications, including operations under permits and surveillance of unpermitted (unauthorized, illegal) activities in navigable waters and ocean waters. The Regional Directors are responsible for (1) coordinating views timely submitted to them by Interior field offices on review of individual permit applications; (2) communicating the views of the Department to the Corps including, but not limited to, any reports and recommendations prepared in accordance with the Fish and Wildlife Coordination Act; (3) exercising the lead role at field level in seeking resolution of any issues with the Corps and with the sponsors of applications; and (4) exercising the lead role and making every reasonable effort in seeking consensus and resolution of differing views among Interior field offices on substantive issues to be addressed in formal Departmental letters of comment. Where resolution and consensus cannot be reached at field level or where the Corps has indicated it will refer a disputed case to Washington for consideration under the Memorandum of Understanding, the Regional Director has the further responsibility of alerting the Director at the earliest practicable time and promptly submitting an objective analysis of the opposing views and other necessary documents as specified in paragraph 1.4A, below.

E. Other Bureaus and Offices. Bureaus and Offices are responsible for: (1) arranging with the Corps for the receipt of permit application notices (public notices); (2) reviewing them in accordance with their program interests; (3) communicating their comments promptly on such applications to the appropriate Regional Director, BSFW, for required coordination at the field level; (4) cooperating fully with and according the lead role to the Regional Director, BSFW, in the field-level resolution of any differing views with other Interior field offices, the Corps, or the sponsor of the application on substantive issues; and (5) alerting headquarters and submitting the full particulars of their views at the earliest practicable time on any case in which they have unresolved differences of view on substantive issues with the Corps, the permit applicant, or other Interior field offices. In accordance with the lead role assigned to BSFW, all Bureaus and Offices upon receiving a request by a permit applicant or his representative for recourse to higher authority shall refer him, as appropriate, to the Regional Director, BSFW, or Director, BSFW. This coordinating and lead role assigned to BSFW is not intended to preclude the normal staff discussions between Interior Bureaus and Offices and the Corps of Engineers on technical

matters preliminary to the development of Departmental comments on the permit application nor to preclude formal communications on matters unrelated to permit application review.

1.4 Procedures.

A. Field Review. Interior field offices should contact the appropriate Regional Director, BSWF, whenever they have questions about, or objections to, a permit application. This should be done within ten days of the date of issuance of the permit application notice if an extension in time is needed for more study or if information supplied with the public notice is inadequate for proper review. The Regional Director, BSWF, will make formal request to the Corps for any such needed extension of time or more information. Without an extension of time, written comments normally are due in the office of the appropriate District or Division Engineer within 30 days of date of issuance of notice. Accordingly, Interior field offices should normally respond to the appropriate Regional Director, BSWF, within 20 days so that he may forward the formal Departmental letter of comment within the time set by the Corps.

Where the Regional Director, BSWF, has received differing responses on a permit application from Interior field offices, he may request the Corps for an extension of time to seek resolution of such differences and immediately arrange for discussions among the concerned offices to that end. Where written replies to the District or Division Engineer are necessary, the Regional Director, BSWF, will furnish copies to those Interior field offices that expressed a substantive interest in the application.

Where it is appropriate to advise the Director, BSWF, of unresolved differences in specific cases, the Regional Director, BSWF, shall submit, to headquarters, an objective analysis and summary of each of the opposing views on the substantive issues together with his recommendations, his comments or reports, any comments or reports submitted by other Interior field offices, and all other essential related documents including copies of any related correspondence, permit application notice, project site map (on quadrangle sheet or navigation chart), hearing record, any issued permits related to the matter and the BSWF field appraisal report. The analysis and documents shall be submitted to the Director, BSWF, for his consideration and action as appropriate, and copies of the transmitted memorandum and the analysis shall be sent to the other Interior field offices concerned with the issues in question. Upon being apprised of the Departmental position after headquarters review, the Regional Director, BSWF, shall communicate the position to the appropriate office of the Corps.

All formal letters of comment to the Corps on permit applications, whether routine or developed after field or headquarters resolution of differing views, shall incorporate the results of any surveys and investigations of the Fish and Wildlife Service prepared in accordance with the provisions of the Fish and Wildlife Coordination Act.

B. Headquarters Review of Intra-Departmental Differences. Bureaus and Offices at the headquarters level will attempt under the leadership of the Director, BSWF, to resolve their differences among themselves. If issues remain unresolved after every reasonable effort at resolution among the differing Bureaus and Offices at the headquarters level, the matter will be submitted by the Director, BSWF, to the AS/FWP for his consideration and appropriate action,

and the other concerned Bureaus and Offices will promptly advise their program Assistant Secretaries. Where the differences are limited to Bureaus under the jurisdiction of the AS/FWP he will resolve the matter and will instruct the Director, BSFW, as to the particulars of the Departmental position that the Regional Director, BSFW, is to formally communicate to the proper office of the Corps. Where Bureaus or Offices under the jurisdiction of other Assistant Secretaries are involved, the AS/FWP, the AS/PDB, and the other concerned program Assistant Secretaries of the other Bureaus or Offices will jointly resolve the differences, and the particulars of the position so established will be transmitted by the AS/FWP to the Director, BSFW, for formal communication to the Corps by the Regional Director, BSFW, as in the above case.

C. Headquarters Review of Differences with the Corps. Resolution of differences with the Corps will be in accordance with policies and procedures outlined in the Memorandum of Understanding. The analyses and documents necessary to resolution, described in paragraph 1.4A, above, will, in case of differences with the Corps, be transmitted by the Regional Director, BSFW, to the Director, BSFW, and, in turn, to the AS/FWP for his consideration and proper action. Where the differences referred to the Under Secretary by the Corps involve substantive issues entirely within the program jurisdiction of one Assistant Secretary, that Assistant Secretary will be timely advised by the Under Secretary and shall promptly prepare the necessary background analysis of the differing views and a statement of his position for transmittal through the AS/PDB to the Under Secretary for his consideration preparatory to discussions or further correspondence with the Corps. Where the issues involve program jurisdictions of two or more Assistant , they will jointly arrange, in coordination with the AS/PDB, for the timely preparation of the necessary analysis and statements of position and, if one of the involved Assistant Secretaries is the AS/FWP, he will have the lead role in such preparation. In all cases, the AS/PDB will attach his views on the issues for the benefit of the Under Secretary.

D. Environmental Review. When the Corps of Engineers determines that the proposed permit requires an environmental statement under the provisions of the National Environmental Policy Act, the review of that statement shall be conducted in accordance with 516 DM 3. To the maximum extent practicable the Department will combine the reviews of these proposals and provide one set of comments to the Corps of Engineers. Such combined reviews will be conducted in accordance with the instructions of the Office of Environmental Project Review.

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Appendix 1

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE SECRETARY OF THE INTERIOR
AND
THE SECRETARY OF THE ARMY

In recognition of the responsibilities of the Secretary of the Army under sections 10 and 13 of the Act of March 3, 1899 (33 U.S.C. 403 and 407), relating to the control of dredging, filling, and excavation in the navigable waters of the United States, and the control of refuse in such waters, and the interrelationships of those responsibilities with the responsibilities of the Secretary of the Interior under the Federal Water Pollution Control Act, as amended (33 U.S.C. 466 et seq.), the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661-666c), and the Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742a et seq.), relating to the control and prevention of water pollution in such waters and the conservation of the Nation's natural resources and related environment, including fish and wildlife and recreational values therein; in recognition of our joint responsibilities under Executive Order No. 11288 to improve water quality through the prevention, control, and abatement of water pollution from Federal and federally licensed activities; and in recognition of other provisions of law and policy, we, the two Secretaries, adopt the following policies and procedures:

POLICIES

1. It is the policy of the two Secretaries that there shall be full coordination and cooperation between their respective Departments on the above responsibilities at all organizational levels, and it is their view that maximum efforts in the discharge of those responsibilities, including the resolution of differing views, must be undertaken at the earliest practicable time and at the field organizational unit most directly concerned. Accordingly, District Engineers of the U.S. Army Corps of Engineers shall coordinate with the Regional Directors of the Secretary of the Interior on fish and wildlife, recreation, and pollution problems associated with dredging, filling, and excavation operations to be conducted under permits issued under the 1899 Act in the navigable waters of the United States, and they shall avail themselves of the technical advice and assistance which such Directors may provide.
2. The Secretary of the Army will seek the advice and counsel of the Secretary of the Interior on difficult cases. If the Secretary of the Interior advises that proposed operations will unreasonably impair natural resources or the related environment, including the fish and wildlife and recreational values thereof, or will reduce the quality of such waters in violation of applicable water quality standards, the Secretary of the Army in acting on the request for a permit will carefully evaluate the advantages and benefits of the operations in relation to the resultant loss or damage, including all data presented by the Secretary of the Interior, and will either deny the permit or include such conditions in the permit as he determines to be in the public interest, including provisions that will assure compliance with water quality standards established in accordance with law.

PROCEDURES FOR CARRYING OUT THESE POLICIES

1. Upon receipt of an application for a permit for dredging, filling, excavation, or other related work in navigable waters of the United States, the District Engineers shall send notices to all interested parties, including the appropriate Regional Directors of the Federal Water Pollution Control Administration, the United States Fish and Wildlife Service, and the National Park Service of the Department of the Interior, and the appropriate State conservation, resources, and

water pollution agencies.

2. Such Regional Directors of the Secretary of the Interior shall immediately make such studies and investigations as they deem necessary or desirable, consult with the appropriate State agencies, and advise the District Engineers whether the work proposed by the permit applicant, including the deposit of any material in or near the navigable waters of the United States, will reduce the quality of such waters in violation of applicable water quality standards or unreasonably impair natural resources or the related .

3. The District Engineer will hold public hearings on permit applications whenever response to a public notice indicates that hearings are desirable to afford all interested parties full opportunity to be heard on objections raised.

4. The District Engineer, in deciding whether a permit should be issued, shall weigh all relevant factors in reaching his decision. In any case where Directors of the Secretary of the Interior advise the District Engineers that proposed work will impair the water quality in violation of applicable water quality standards or unreasonably impair the natural resources or the related environment, he shall, within the limits of his responsibility, encourage the applicant to take steps that will resolve the objections to the work. Failing in this respect, the District Engineer shall forward the case for the consideration of the Chief of Engineers and the appropriate Regional Director of the Secretary of the Interior shall submit his views and recommendations to his agency's Washington headquarters.

5. The Chief of Engineers shall refer to the Under Secretary of the Interior all those cases referred to him containing unresolved substantive differences of views and he shall include his analysis thereof, for the purpose of obtaining the Department of the Interior's comments prior to final determination of the issues.

6. In those cases where the Chief of Engineers and the Under Secretary are unable to resolve the remaining issues, the cases will be referred to the Secretary of the Army for decision in consultation with the Secretary of the Interior.

7. If in the course of operations within this understanding either Secretary finds its terms in need of modification, he may notify the other of the nature of the desired changes. In that event the Secretaries shall within 90 days negotiate such amendment as is considered desirable or may agree upon termination of this understanding at the end of the period.

(Sgd) Stewart L. Udall
Secretary of the Interior

Dated July 13, 1967

(Sgd) Stanley Resor
Secretary of the Army

Dated July 13, 1967

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